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समक्ष माननीय मध्यप्रदेश उच्च न्यायालय जबलपुर Division Bench (Criminal)

अपील अन्तर्गत धारा- 374 (2) दंड प्रक्रिया संहिता

क्रिमिनल अपील क्रमांक- 1294 /2000

प्रमोद सिंह उर्फ राजू आत्मज- रामसिंग

आयु- 28 वर्ष

पेशा- फर्नीचर का निवासी- स्टेशन पारा

वॉर्ड नं0-9 राजनांदगाँव,

थाना व जिला- राजनांदगाँव (MP0) ------- अपीलार्थी

(जेल में)

विरूद्ध

मध्यप्रदेश शासन

द्वारा:- आरक्षी केन्द्र लालबाग

जिला- राजनांदगाँव MP0

दोष सिद्धि

धारा- 394, 397 तथा
302 भा0द0 संहिता

सजा

सात वर्ष का कठोर कारावास
200/- 200 अर्थदंड, आजीवन कारावास
तथा 2000/-रुपये अर्थदंड
अर्थदंड न दिये जाने पर पन्द्रह
दिन एवं तीन माह का
अतिरिक्त कारावास

4.A.R. (23)

XI-HC-78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

20-2-2007

Mr. K.K. Singh, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 24th April, 2000, passed by the Additional Sessions Judge, Rajnandgaon in Sessions Trial No.69/99, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 394 read with Section 397 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for three months and to undergo R.I. for seven years and pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 15 days, respectively.

Case of the prosecution, in brief, is that deceased Subhash was working as Chowkidar in Rungta Rice Mill. On 8-3-1999, he was on duty since 6 p.m. to 6 a.m. In the night, when he was sleeping under the staircase, murder of Subhash was committed. There was an adjoining rice mill in the name of Shivnath Rice Mill, where Munnalal (PW-5) and Kalika Prasad

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Shrivastava (PW-6), Chowkidar, were on duty. At about 12 mid night, the accused entered that mill which was noticed by Kalika Prasad Shrivastava, ultimately the accused was caught near big fan of the mill and was locked in a bath room. On enquiry, he disclosed his name as Subhash and said that he is working in the adjoining mill. Owner of Shivnath Rice Mill was informed about this incident. In the morning, the accused asked to allow him to go for attending the call of nature, but he was informed that he cannot be allowed, on which the accused threatened that he will commit suicide. Owner of the mill was informed and the owner asked these persons to open the door. After opening the door, the accused came and sat on the staircase. At that time, owner of mill came and when these persons started talking with the owner of the mill, the accused taking chance ran away. The matter was reported to the Police under Ex.P-3 by Mahendra Rungta (PW-2) that "he is the owner of Rungta Rice Mill, today at about 8 a.m. he received a telephone call from Santosh Agrawal, owner of the adjoining rice mill, who informed him that one thief has been caught in the night by Munnalal, he has been locked in a bath room, in the morning when door of the bath room was opened, the person ran away and the Chowkidar of my mill has been murdered, on which he went to the spot along with Santosh Agrawal and saw blood on the floor under the staircase, the body of Subhash was lying there covered by jute bag".

Receiving this report, the Station House Officer, Police Station: Lalbag registered offence under Section 302 of the I.P.C. and left for the scene of occurrence. After giving notice Ex.P-1 to the Panchas, he took into

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	possession one dagger stained with blood, one bottle of country made liquor, one Chaddar, one pair of black shoe, one jute bag and one empty match box under Ex.P-2. One black colour Atlas cycle No.MP320077 on the backside of which, the name of Pramod Singh, Station Para, Ward No.9, was written with red paint, was seized under Ex.P-6 from the place of occurrence, the rice mill. While in police custody, the accused gave memorandum Ex.P-8 regarding the slipper of deceased Subhash and Rs.400/-, in pursuance of that he got recovered Rs.400/-, slipper, one pant and sando banian under Ex.P-7. After cutting nails of the accused, same were also taken into possession under Ex.P-10. Inquest on the body of Subhash Ex.P-14 was prepared by the Investigating Officer. Test identification parade of the accused was conducted by the Executive Magistrate and identification memos Exs.P-5, P-11, P-13, P-20 & P-21 were prepared. Test identification of the slippers of deceased Subhash was also conducted by the Executive Magistrate and test identification memo Ex.P-25 was prepared. Body of Subhash was sent for post-mortem examination to Government Hospital, Rajnandgaon where Dr. H.K. Joshi conducted post-mortem on the body of Subhash and opined that the cause of death was excessive loss of blood, injuries to vital organ and the death was homicidal in nature. Injuries on the body of the accused were also examined by Dr. S.K. Mandal who prepared the report Ex.P-18. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar, from where the report Ex.P-23 was received. Site plan Ex.P-26 was prepared by the Investigating Officer. Serologist's report Ex.P-30 was received.	

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After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Rajnandgaon, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned Additional Sessions Judge, Rajnandgaon, received the case on transfer for trial.

In order to establish charge against the accused, 15 witnesses were examined by the prosecution. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that when he was going for some work, the Police caught him, thereafter, he was given beating, he has been implicated in a false crime and he has not committed the murder. Before the identification, he was shown to the witnesses in the Police Station.

After hearing counsel for respective parties, learned Additional Sessions Judge convicted and sentenced the accused as aforementioned.

We have heard Mr. K.K. Singh, learned counsel for the appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/ respondent.

At the outset, Mr. K.K. Singh has not disputed the homicidal death of Subhash. Moreover, Dr. H.K. Joshi (PW-7) who conducted post-mortem on the body of Subhash, has stated that there were incised wounds on neck, chest & stomach, the death was homicidal in nature and was as a result of shock & excessive bleeding and on account of the injuries on vital organs.

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Therefore, it is established that the death of Subhash was homicidal in nature.

As far as involvement of accused Pramod Singh @ Raju in committing the murder of Subhash is concerned, there is no direct or ocular evidence in this matter. Conviction rests on the circumstantial evidence. As per the settled law for resting conviction based on the circumstantial evidence as has been held by the Apex Court in the matter of **Dhananjoy Chatterjee vs. State of W.B.** reported in **(1994) 2 SCC 220**:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

Now, we shall proceed to scrutinize the evidence adduced by the prosecution. In order to reach to the conclusion as to whether the prosecution has been able to establish charge against the accused based on the circumstantial evidence, the prosecution has tried to establish charge against the accused based on the following circumstances: -

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1. that, the accused was caught and identified in the test identification parade by Munnalal (PW-5) & Kalika Prasad Shrivastava (PW-6) in the premises of Shivnath Rice Mill;
2. that, cycle of the accused was recovered near the place of occurrence;
3. that, slippers of deceased Subhash were recovered at the instance of the accused from his residence; and
4. that, human blood was found on banian & pant of the accused.

First circumstance: -

As far as the first circumstance is concerned, Munnalal (PW-5) has stated in his evidence that on the fateful day he was working as Mechanic in Shivnath Rice Mill, Rewadih, he was on duty from 8 p.m. to 8 a.m., Kalika Prasad Shrivastava (PW-6) was Chowkidar, at about 11 p.m. in the night he along with Kalika Prasad Shrivastava was sitting in the Office of the mill, at about 12 mid night, the accused present in the Court came, Shrivastava noticed the presence of some persons and he apprised him that somebody has come, on which he replied that our persons Devnath & others might be there, then again Chowkidar Shrivastava had said that the person who came in the mill has not come out, thereafter, Shrivastava and he left to see him, he saw that the accused was wearing baniyan & underwear (Chaddi). He entered big fan of the mill, the accused was taken out from that place, in the process, some scuffle took place and on enquiry, the accused disclosed his name as Subhash. Thereafter, he along with Shrivastava brought the

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accused in the Office and other persons were called. On enquiry, the accused disclosed that he is Chowkidar of the adjoining mill, he said that he has come without any work, when this witness enquired from him as to how there are blood stains on his banian, the accused said that as he is working as painter therefore, some spots of the paint are there on his banian. Thereafter, they closed him in a bath room, he asked for water and water was given to him for drinking. The accused was in bath room till 6 a.m. and in the morning he said that he has to go to attend the call of nature, when they replied that they will not allow him to come out, the accused threatened them of committing suicide, therefore, they allowed him to come out of bath room for some time, he sat on the staircase, he asked for Bidi that was also given to him. Thereafter, the owner came, when they started seeing towards the owner, taking chance the accused ran away. Thereafter, the accused was identified in the identification parade and memorandum Ex.P-10 was prepared.

Kalika Prasad Shrivastava (PW-6) has also corroborated the evidence of this witness (PW-5) saying that the person was caught and put in the bath room. But in para 7 of his examination, he has stated that in the Court he is not able to identify the accused as his eyesight is weak, he is using specs, even after putting specs he said that he is not able to identify the person. Therefore, only the evidence of Munnalal (PW-5) remains to be scrutinized.

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Learned counsel for the appellant argued that the accused was shown to the witnesses in the Police Station before the identification parade was conducted, therefore, the test identification cannot be relied upon.

After going through the evidence we are of the view that the accused was shown to the witnesses in the Police Station. But even if the identification parade is not proved, even then the evidence of the witness identifying the accused in the Court can also be believed, of course, if the witness is able to satisfy the Court that he had sufficient opportunity to identify the accused during the commission of crime. Therefore, now the question remains as to whether Munnalal (PW-5) was able to memorize the identity of the accused when the accused was caught in the mill and that whether PW-5 had sufficient opportunity to identify the accused at the time of the incident. In this respect, if we scrutinize the evidence of PW-5 which has been reproduced above, this witness has categorically stated that he along with Chowkidar Shrivastava searched the accused, he was hiding himself behind big fan of the mill, thereafter, he was caught there, at that place some scuffle also took place between them and the accused was closed in a bathroom, he was in the bathroom till morning, even on demand by the accused water was supplied to him and at 6 a.m. on the request of the accused that he wanted to attend the call of nature, he was allowed to come out of the bathroom, he was sitting for some time on the staircase and thereafter, taking chance he ran way. In the circumstances, we are of the considered opinion that in view of the above, the witness had sufficient opportunity to identify the accused and memorize his identification. Kalika

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Prasad Shrivastava (PW-6) has also to a certain extent corroborated the above evidence of the witness (PW-5) except that he failed to identify the accused in the Court.

Learned counsel for the appellant argued that there is contradiction between the evidence of Munnalal (PW-5) & Kalika Prasad Shrivastava (PW-6). PW-5 has stated that he took out the accused from behind big fan of the mill whereas PW-6 has stated that the accused came out from behind the big fan and started running towards him, when he showed him club, he ran towards Munnalal.

But we do not find any substance in this argument. Both of them (PW-5 & PW-6) have stated that the accused hide himself behind big fan of the mill, thereafter, he came out. Even PW-6 has stated that there was scuffle between Munnalal and the accused and so has been stated by PW-5. Therefore, there is no contradiction in the evidence of these two witnesses in the material particulars.

Next argument of learned counsel for the appellant was that there are certain improvements in the Court evidence of Munnalal (PW-5), but in the first instance, this witness was not confronted with his statement before the Police. In order to contradict the witness it was necessary that the witness must have been contradicted with the parts of the previous statement. As per the requirement of Section 145 of the Indian Evidence Act, 1872, counsel for the accused ought to have confronted this witness with the police statement by indicating the portion of his statement in the

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police statement, but this has not been done in the present case. Even otherwise, just to satisfy ourselves with the argument of learned counsel for the appellant, we have gone through the police dairy statement of this witness. In substance, all material points were disclosed by this witness in the police dairy statement regarding putting the accused in bathroom, calling other persons and that he was in the bathroom till morning. It has also been mentioned therein that water was supplied to him, thereafter, the accused said that he will commit suicide, that is why he was taken out and when owner of the mill came, this witness went towards the owner and the accused ran away. Therefore, in substance there is no contradiction between the Court evidence and the police statement of this witness.

For the foregoing reasons, we are of the considered opinion that the Court below has rightly believed the evidence of Munnalal (PW-5) that the accused was caught by this person & Kalika Prasad Shrivastava (PW-6) and was put in the bathroom. Therefore, we are also of the considered opinion that the accused has rightly been identified by this witness (PW-5) before the Court and the accused was the person who was caught in Shivnath Rice Mill by PW-5 & PW-6.

Second circumstance: -

As far as recovery of cycle is concerned, the cycle in question was recovered from the place of occurrence under seizure memo Ex.P-6, as per the seizure memo the cycle was seized from the place of occurrence i.e. Rungta Rice Mill. Behind the cycle, name of accused Pramod Singh, Station

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Para, Ward No.9 was written. This fact of recovery has not been disputed by learned counsel for the appellant and this fact has also been proved by Devlal (PW-4) that one cycle was seized in front of him under Ex.P-6. Sanjay Pundhir (PW-14), Investigating Officer, has also stated that from the place of occurrence one Atlas cycle was taken into possession under Ex.P-6 and name of accused Pramod Singh, Station Para, Ward No.9 was written behind the cycle, which is Article 'A'.

Learned counsel for the appellant argued that merely because name of the accused was written on the cycle, it cannot be considered to be established that the cycle belongs to the accused, as no other evidence has been adduced by the prosecution to establish that the cycle which was recovered from the place of occurrence belongs to the accused.

It is true that no other evidence has been adduced in order to establish the fact that the cycle belongs to the accused, apart from the fact that name of the accused was written behind the cycle. The fact remains that the cycle was recovered from the place of occurrence and name of the accused was written with paint behind the cycle. Therefore, merely by using this circumstance and solely on the basis of this circumstance, the accused cannot be connected with the crime in question, but definitely this circumstance can be taken into consideration in addition to the other established circumstances connecting the accused with the crime in the question. It is true that Pramod Singh may be the name of some other person also, but the fact remains that the prosecution has been

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able to establish that the accused was caught at the site i.e. Shivnath Rice Mill and on the cycle which was found on the spot, name of the accused was written behind the cycle. Apart from that, address of the accused i.e. Pramod Singh, Station Para, Ward No.9 has also been written behind the cycle. This establishes that the cycle belongs to the accused. Therefore, the circumstance that name of the accused was written on the cycle coupled with the circumstance that the accused was caught at the spot and nobody came forward claiming the cycle, can be definitely used as an additional circumstance against the accused connecting him with the crime in question.

Third circumstance: -

As far as recovery of slippers of the deceased at the instance of the accused is concerned, learned counsel for the appellant argued that the prosecution has not been able to adduce evidence to establish that the room from where the slippers were recovered belongs to the accused, therefore, the accused cannot be connected with the crime in question.

The accused while in police custody gave memorandum Ex.P-8 on 10-3-1999, whereas the offence was committed in the intervening night of 8th & 9th March, 1999. In the said memo, the accused disclosed that he took the slippers of Subhash, same are kept by him in his room and in pursuance of that, those slippers were recovered at the instance of the accused from the room under Ex.P-7. Devlal (PW-4) has stated in his evidence that slippers were seized under Ex.P-7 which bears his signature from portion 'A' to 'A'. Sanjay Pundhir (PW-14), Investigating Officer has also stated in his

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evidence that the accused gave memorandum Ex.P-8 that Rs.400/- and slippers were kept in his room, he can get recover the same. He also gave information that pant & banian were kept in his room in suitcase and in pursuance of that, slippers were recovered under Ex.P-7. The above slippers were put to test identification before Executive Magistrate Sudhir Taram (PW-13) on 11-4-1999 and before him brother of the deceased Dinkar Rao (PW-9) identified those slippers to be of his brother Subhash (deceased) and the Executive Magistrate prepared the identification memo Ex.P-25.

Dinkar Rao (PW-9), brother of the deceased, has stated in his evidence that he identified the slippers and the slippers were mixed with 5-6 pairs of other slippers. In cross-examination, he has stated that his brother used to wear those slippers, therefore, he had opportunity to identify the slippers. His brother was wearing those slippers since last few days and the slippers were damaged by friction. Therefore, he was able to identify those slippers as his brother's slippers were yellow in colour and on account of friction, there was an impression of toe on the slipper, as such, he was able to identify the same and there was mark of pressing on the place where toe lands on the slipper.

In the circumstances, from the above evidence of Devlal (PW-4) & Sanjay Pundhir (PW-14) as also Dinkar Rao (PW-9), brother of the deceased, slippers of the deceased were recovered at the instance of the accused from his room.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Now, coming to the argument of learned counsel for the appellant that no evidence was collected by the Investigating Officer that the room from where the slippers were recovered belongs to the accused, in para 26 of cross-examination Sanjay Pundhir (PW-14), Investigating Officer, has categorically stated that the owner of the room was Sattaar, the accused used to reside in the room as a tenant and that was in Station Para. Therefore, the slippers were recovered at the instance of the accused from a room, as such, the slippers were in the room and within the knowledge of the accused. He has not explained that if the slippers were not placed by him in the room, then how he came to know about those slippers which were lying in the room.

The Apex Court in the matter of **State of Maharashtra vs. Suresh** reported in **2000 SCC (Cri) 263**, held that *there are three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified*

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course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

Similarly, in the present case, the accused has not explained as to how he pointed and how it was within his knowledge that the slippers of the deceased were lying in the room, from where they were recovered. Therefore, in the light of the above judgment, it can safely be presumed that the accused was the person who kept those slippers in the room.

In the circumstances, we do not find any substance in the argument of learned counsel for the appellant that the prosecution has not been able to establish that the room from where the slippers were recovered was not within the knowledge of the accused. Even if it is not established that the room belongs to the accused, even then, the accused can be connected with the crime in question on the ground that the slippers were recovered at the instance of the accused, even without establishing the title of the house whether it belongs to the accused or not. In order to connect the accused with the crime it is not necessary that the place from where the articles (slippers) were recovered belongs to the accused.

From the above discussion, the prosecution has been able to establish that slippers of the deceased were recovered from the residence of the accused at his instance. Section 114 of the Indian Evidence Act, 1872 envisages that "the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of

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natural events, human conduct and public and private business, in their relation to the facts of the particular case". The Apex Court in the matter of **Ronny alias Ronald James Alwaris, etc. vs. State of Maharashtra** reported in **AIR 1998 SC 1251** held that

> "recovery of articles belonging to the deceased family from the possession of the accused soon after the incident, ... possession remained unexplained by the accused, so the presumption under illustration (a) of Section 114 of the Evidence Act will be attracted. ..... Murder and robbery of the articles found to be part of the same transaction and thus, it can be concluded that the accused and no one else had committed the murders and the robbery".

In the present case also, slippers of the deceased were recovered at the instance of the accused from his residence within a period of two days from the date of commission of crime i.e. the murder of Subhash. Therefore, presumption can safely be drawn under illustration (a) Section 114 of the Evidence Act that the accused was involved in the murder of Subhash.

Fourth circumstance: -

As far as the circumstance that human blood was found on banian & pant of the accused is concerned, banian & pant were seized under Ex.P-7 which has been proved by Devlal (PW-4) & Sanjay Pundhir (PW-14), Investigating Officer, and they were seized from the house of the accused. As per the chemical examiner's report, blood was found on pant & banian of

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the accused. Similarly, as per the Serologist's report Ex.P-30, human blood was found on banian & pant of the accused.

Learned counsel for the appellant argued that there is no report that the blood found on banian & pant of the accused was of the blood group of the deceased, therefore, the accused cannot be connected with the crime in question.

It is true that blood group of the human blood which was found on pant & banian of the accused could not be ascertained on account of disintegration, but this is not the only circumstance based on which the accused is being connected with the crime. This circumstance can be taken into consideration in addition to the other circumstances against the accused to connect him with the crime in question, human blood was found on banian & pant of the accused and no explanation whatsoever coming forth from the accused regarding the human blood on his banian & pant, then certainly it can be taken as an additional circumstance connecting the accused with the crime in question. As blood was disintegrated from banian and pant, therefore, origin of the blood could not be ascertained.

In the matter of **State of Rajasthan vs. Teja Ram and others** reported in **(1999) 3 SCC 507**, the Apex Court held that

> "Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all.

P.T.O.

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It cannot be said that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility."

In the present case, as per the Serologist's report there was human blood on pant & banian of the accused and the accused has not explained that how his pant & banian were stained with human blood. This is an additional circumstance against the accused.

Therefore, for the foregoing reasons, we are of the considered opinion that the prosecution has been able to establish with legal and clinching evidence that the accused was caught in the fateful night in Shivnath Rice Mill, identified by Munnalal (PW-5), they noticed blood stains on his clothes, cycle of the accused was also found at the place of occurrence, banian & pant of the accused were found stained with human blood, slippers of the deceased were recovered at the instance of the accused from his place of residence. Hence, all these circumstances conclusively complete the chain which unerringly point towards the involvement of the accused and based on that an irresistible conclusion can be arrived that the accused was the author of the crime in question and there is not possibility of committing the crime in question by any third person except that of by the accused. In the circumstances, we do not find any illegality or infirmity in the judgment of the trial Court for convicting and sentencing the accused under Section 302 of the I.P.C. for committing the murder of Subhash.

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As far as conviction and sentence of the accused under Section 394 read with Section 397 of the I.P.C. is concerned, learned Deputy Govt. Advocate was not able to argue that the same is based on any legal evidence, because the prosecution has not been able to establish that the currency notes which were recovered were looted by the accused from Subhash, as such, there is legal evidence to connect the accused with the commission of offence under Section 394 read with Section 397 of the I.P.C.

In the result, the appeal of the accused/appellant partly succeeds and the same is partly allowed to the extent of his conviction and sentence under Section 394 read with Section 397 of the I.P.C. But, as far as conviction and sentence imposed upon the appellant under Section 302 of the I.P.C. are concerned, they are maintained. Conviction and sentence imposed upon the appellant under Section 394 read with Section 397 of the I.P.C. are set aside and he is acquitted of the said charge.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge